

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Apollo Wood Recovery, Inc.,

Complainant,

vs.

Southern California Edison Company,

Defendant.

Case 01-10-048  
(Filed October 29, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING  
REQUIRING PARTIES TO MEET AND CONFER  
AND SCHEDULING PREHEARING CONFERENCE  
ON FEBRUARY 28, 2002 AT 10 a.m. IN LOS ANGELES**

**Background**

Apollo Wood Recovery, Inc. (Apollo) filed the instant complaint on October 29, 2001. Southern California Edison Company (SCE) was notified on November 29, 2001, that this complaint had been filed against it and was directed to file an answer by December 29, 2001. SCE filed its answer on December 31, 2001. The proceeding has been categorized as adjudicatory, requiring hearings. Ex parte communications between parties to the proceeding and decision-makers are prohibited in adjudicatory proceedings consistent with Rule 7(b) of the Commission's Rules of Practice and Procedure.

In brief, Apollo alleges that SCE has improperly recalculated bills for service rendered to Apollo between June 1999 and September 1999 to increase the

amount of power billed at on-peak rates. Apollo asserts that during 1999 it modified its hours of operation to avoid energy usage during on-peak periods and that if a recalculation does occur, such recalculation should be based on Apollo's on-peak usage in 2000, rather than on historical usage in 1997 and 1998. SCE asserts that a programming and registration error occurred in Apollo's meter that resulted in an inaccurate recording of on-peak usage in 1999 and that recalculation of the on-peak usage should be based on historical usage in 1997 and 1998.

### **Statement of Facts**

The following facts are not in dispute.

The disputed bills cover the period of June, July, August, and September 1999, SCE's summer on-peak period. Apollo and SCE agree on the total power consumption by Apollo during these billing periods.

During the June – September 1999 billing periods, Apollo operated an urban wood waste processing facility located at 13303 San Bernardino Avenue, Fontana, California. Apollo received service under SCE Schedule TOU-GS-2B for the June – September 1999 billing periods.

Apollo terminated service at 13303 San Bernardino Avenue, Fontana, California on January 4, 2000. Apollo moved its operations to 8640 Cherry Avenue, Fontana, California.

SCE first notified Apollo of a meter error by letter dated August 15, 2000, attached as Exhibit 1 to the Complaint, approximately seven months after Apollo terminated service at 13303 San Bernardino Avenue, Fontana, California.

Apollo offered to settle the bill dispute for \$3,000.00, which SCE declined.

### **Apollo's Complaint**

Apollo alleges that SCE has improperly recalculated its power usage to shift Apollo's usage into the on-peak period, thus increasing Apollo's bills during

the June – September 1999 billing periods. Apollo asserts that during the summer of 1999 it modified its hours of operation to avoid energy use during the on-peak hours. Apollo presents a copy of May 17, 1999 instructions from its company president to its managers directing that worker shifts begin at 4 a.m. so that all operations using electricity would conclude by 11:30 a.m. Additionally, copies of timesheets for June, August, and September 1999, showing that workers generally clocked in between 4 a.m. and 6 a.m., were presented as evidence that Apollo had modified its operations as directed. Apollo alleges that the only on-peak electrical usage for 1999 was for its office.

Apollo asserts that because it significantly modified its operations in 1999, a comparison to its historical time of electricity use, if its meter was improperly programmed and registered, is inappropriate. Apollo asserts that a more accurate comparison is to its 2000 electricity usage. Apollo calculates that using 2000 energy usage as a basis for recalculation, it would owe SCE \$219.00 each month for June – September 1999, for a total of \$876.00. Apollo represents that it has previously offered to settle its dispute with SCE for \$3,000.00 but the offer was refused. Apollo seeks a Commission decision directing SCE to use Apollo's 2000 usage as a basis for recalculating its 1999 bills, or in the alternative, directing SCE to accept Apollo's settlement offer of \$3,000.00.

### **SCE's Defense**

SCE avers that an error in the programming of the calendar function caused Apollo's meter at 13303 San Bernardino Avenue, Fontana, California to improperly record peak energy and demand charges and thus recalculation of Apollo's bills using historical usage in 1997 and 1998 is warranted. SCE attached Exhibit E showing that the meter at 13303 San Bernardino Avenue, Fontana, California registered zero usage on peak for June – September 1999. SCE asserts that because Apollo moved its operating facilities and changed equipment and

machinery in 2000, Apollo's 2000 usage cannot be utilized to extrapolate its 1999 usage. SCE avers that it offered to settle the billing dispute if Apollo paid \$6,000.00 and that Apollo declined. SCE asserts numerous affirmative defenses, among them: failure to allege violations of Pub. Util. Code § 1702, failure to state a cause of action, performance under tariff, compliance with tariffs, consent to tariff, and unclean hands.

### **Meet and Confer**

Pursuant to Rule 49, I direct the parties to meet and confer.<sup>1</sup> Consistent with Rule 49, parties should discuss the particulars set forth below and prepare and file a joint case management statement (JCMS), or a proposed settlement agreement, within 10 days of such a meeting, but no later than the close of business on February 22, 2002.<sup>2</sup> Because both parties have previously offered to settle this matter, I am hopeful that settlement is possible and encourage Apollo and SCE to work diligently to that end.

In particular, the parties should use this opportunity to see if they can reach agreement on the following: 1) whether the meter at 13303 San Bernardino Avenue, Fontana, California properly recorded Apollo's on-peak energy usage and demand during 1997 and 1998; 2) whether SCE modified in any way the programming or registration of the meter at 13303 San Bernardino Avenue, Fontana, California between the end of the peak season in 1998 and the beginning of the peak season in 1999, and if so, how; 3) whose responsibility it is

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<sup>1</sup> The parties may meet telephonically if it is more convenient for them than an in-person meeting.

<sup>2</sup> I must receive the JCMS electronically, at [mlc@cpuc.ca.gov](mailto:mlc@cpuc.ca.gov) by 5 p.m. on Friday, February 22, 2002.

to maintain and service the metering equipment; 4) whether Apollo's equipment installed and utilized at 8640 Cherry Avenue, Fontana, California is the same or comparable equipment to that installed and utilized at 13303 San Bernardino Avenue, Fontana, California; 5) a listing and description of the electricity using equipment installed and utilized at 13303 San Bernardino Avenue, Fontana, California; 6) whether the timecards set forth as Exhibits 6-1 through 6-5 and 6-26 through 6-48 to Apollo's complaint<sup>3</sup> are an accurate representation of Apollo's hours of operation in the summer of 1999; 7) whether any independent evidence exists that Apollo operated or did not operate electrical equipment above and beyond office usage between noon and 6 p.m. during June – September 1999; 8) the amount owed to SCE by Apollo if the Commission approves recalculation of Apollo's June – September 1999 bills based on 1997 or 1998 historical usage; and 9) the amount owed to SCE by Apollo if the Commission approves recalculation of Apollo's June – September 1999 bills based on 2000 historical usage.

The parties should use this opportunity to prepare a set of documents that the parties stipulate are accurate copies of bills rendered by SCE for service to Apollo for June – September 1997, June – September 1998, June – September 1999, and June – September 2000. Apollo should review its records to determine whether original worker timecards for June 1997 through December 2000 are available and report on their availability in the JCMS.

In addition to the above requirements, the parties should use the meet and confer to identify any additional issues to be considered and to determine

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<sup>3</sup> On page 4 of C.01-10-048, Apollo states that the timecards cover four months and are set forth in Exhibits 6-1 through 6-48. However, the formally filed copy of the complaint only contains Exhibits 6-1 through 6-5 and 6-26 through 6-48.

whether the issues can be narrowed or amended. If the parties cannot reach a settlement, they should fulfill the requirements of Rule 49, and draft the JCMS as a prehearing conference (PHC) statement. The JCMS should also include a proposed schedule for evidentiary hearings and the service of prepared testimony. The parties are reminded that pursuant to Pub. Util. Code § 1701.2(d), an adjudicatory case must be resolved within 12 months of initiation. Therefore, the parties are urged to initiate discovery, if discovery is necessary in this case, as soon as possible.

### **Prehearing Conference**

A PHC is scheduled for Thursday, February 28, 2002, at 10 a.m., in the Commission Courtroom, State Office Building, 320 West 4th Street, Room 500, Los Angeles, CA 90013.

### **Conference Call**

If the parties have any interlocutory issues, for example scheduling problems or discovery disputes, that need resolution during the course of the proceeding, please call or e-mail assigned Administrative Law Judge (ALJ) Michelle Cooke at (415) 703-2637 or [mlc@cpuc.ca.gov](mailto:mlc@cpuc.ca.gov) and a conference call will be scheduled.

### **Service**

It is Commission practice that all appearances must serve all parties and state service participants on the service list. Rule 2.3(b) provides that the ALJ may direct that service be made by electronic means. I will require all appearances that can provide the Commission with an electronic mail address to serve documents in this proceeding by electronic mail, and in turn, to accept service by electronic mail. Service by electronic mail will be used in lieu of paper mail where an electronic address has been provided. Any appearance, or state

service participant, who has not provided an electronic mail address shall serve and take service by paper mail. Service by mail is described in Rule 2.3(a).

This ruling does not change the rules regarding the tendering of documents for filing. Documents for filing must be tendered in paper form, as described in Rule 2, et seq. Service on the Commission, including the assigned ALJ and Commissioner, may be by electronic mail. My e-mail address is [mlc@cpuc.ca.gov](mailto:mlc@cpuc.ca.gov).

### **Electronic Service Protocols**

A sender may serve a document by electronic mail by attaching the document to a note. The subject of the note accompanying the document should include the proceeding number and identify the party sending the document. Within the note, the word processing program used for the document should be noted. If the electronic mail is returned to the sender, or the recipient indicates to the sender that it cannot open the document, the sender shall immediately serve that party by paper mail. Documents saved and sent in Microsoft Word 6.0 are readily opened by most recipients.

### **Accessing Up-to-Date Electronic Mail Addresses**

The current service lists for active proceedings are available on the Commission's web page, [www.cpsc.ca.gov](http://www.cpsc.ca.gov). Choose "Service Lists" on the "Quick Links" bar. The service list for this proceeding can be located in the "Index of Service Lists" by scrolling to the proceeding number. To view and copy the electronic addresses for a service list, download the comma-delimited file, and copy the column containing the electronic addresses. The Commission's Process Office periodically updates service lists to correct errors or to make changes at the request of parties and non-parties on the list. Appearances should copy the current service list from the web page (or obtain paper copy from the Process Office) before serving a document.





Therefore, **IT IS RULED** that:

1. Parties shall meet and confer informally and shall file a joint case management statement, or proposed settlement agreement, within 10 days of such a meeting, but no later than the close of business on February 22, 2002.
2. A prehearing conference in this proceeding will be held at 10 a.m. on February 28, 2002, in the Commission Courtroom, State Office Building, 320 West 4th Street, Room 500, Los Angeles, CA 90013.
3. All appearances that have provided the Commission with an electronic mail address shall serve documents in this proceeding by electronic mail, and in turn, shall accept service by electronic mail. Service by electronic mail will be used in lieu of paper mail where an electronic address has been provided. The electronic service protocols described in this ruling shall be observed.
4. Any appearance that has not provided an electronic mail address shall serve and take service by paper mail.

Dated January 4, 2002, at San Francisco, California.

/s/ MICHELLE COOKE

Michelle Cooke  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Requiring Parties to Meet and Confer and Scheduling Prehearing Conference on February 28, 2002 at 10 a.m. in Los Angeles on all parties of record in this proceeding or their attorneys of record.

Dated January 4, 2002, at San Francisco, California.

/s/ KE HUANG

Ke Huang

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.